

REMARKS/ARGUMENTS

With respect to the drawings, the Examiner has not responded to the points made by applicant in the Response of July 14, 2004 nor to applicant's request for clarification of the Examiner's objection. With respect to the Office Action of November 17, 2004, the Examiner has not checked any of the spaces next to Item 10 on the Form PTOL-326 pertaining to the drawings. Under the circumstances, applicant will proceed on the assumption that the drawings are accepted by the Examiner.

All of the claims in the application, comprising claims 1-8, stand finally rejected under 35 USC 103(a) as being unpatentable over Anderson in view of Uhlig, the Examiner reasoning that it would have been obvious to modify the container and closure cap of Anderson by replacing Anderson's tamper proof ring 13A with the ratchet tooth connection of Uhlig so as to render obvious the fluid-tight vial that has the features claimed by applicant. The Examiner further apparently concludes, based upon "Official Notice," that a tamper proof ring and mating ratchet teeth are well known mechanical equivalents. This rejection is respectfully traversed for the reasons stated herein.

It is well-settled that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims obvious. *In re Ratti*, 123 USPQ 349 (CCPA 1959). Here, the Examiner is proposing to modify the container closure of Anderson by replacing Anderson's tamper proof ring 13A with the mating ratchet teeth 26 and 27 shown in FIG. 5 of Uhlig. It is instructive to note the principle of operation of the Anderson cap,

specifically with respect to the function of tamper proof ring 13A. Tamper proof ring 13A is stated to function "like the ring 13 discussed above." Column 5, lines 46-47. The function of ring 13 is discussed at column 3, lines 34-37 of Anderson, where it is stated:

The cap includes a tamper proof ring 13 around the cap 10. Prior to the first use of the container, the cap 10 is twisted to break the tamper proof ring 13 so the cap 10 can be removed.

Returning to the discussion of ring 13A in column 5, it is stated that "ring 13A prevents the cap 10A from being removed without breaking the ring 13A." Column 5, lines 47-49. Thus, the very clear teaching of Anderson is that tamper proof ring 13A will not allow the cap to be removed when the ring is unbroken.

But the mating ratchet teeth 26 and 27 of Uhlig do not and cannot operate in this manner. More specifically, Uhlig states that the circumferential series of inwardly projecting ratchet teeth 26 that engage a corresponding circumferential series of outwardly projecting ratchet teeth 27 on the finish of the container as shown in FIG. 5 are to "provide maximum resistance to accidental removal of closure 11 from container C." Column 5, lines 19-26. Uhlig goes on to state that this arrangement "inhibits accidental removal of the closure by a child or otherwise." Column 5, lines 26-32. In other words, Uhlig's ratchet teeth do not prevent removal of the cap from the container, but merely inhibit accidental removal. This is in clear contrast to the principle of operation of Anderson's tamperproof ring 13A which prevents removal of the cap outright unless and until tamper proof ring 13A is broken.

Appl. No. 10/645,226

RESPONSE UNDER 37 CFR 1.116 - - EXPEDITED dated November 29, 2004

Reply to Final Rejection of November 17, 2004

As to the Examiner's official notice that ratchet teeth and a breakaway ring are known mechanical equivalents, applicant offers the following. The facts officially noticed by the Examiner without documentary evidence in the record must be "capable of such instant and unquestionable demonstration as to defy dispute." *In re Ahlert*, 165 USPQ 418, 420 (CCPA 1970) (holding that it was proper to take official notice that it is well known to adjust the intensity of a flame in accordance with the amount of heat desired from the flame). The prior art of record here is respectfully submitted to clearly negate the Examiner's position. Specifically, Uhlig's ratchet teeth remain intact after they perform their function of inhibiting accidental cap removal. In contradistinction, Anderson's tamper proof ring is destroyed after it performs its function of allowing the cap to be removed. Given this, the Examiner's position that he may take official notice that a breakaway ring is the well known mechanical equivalent of ratchet teeth may not be said to be "capable of such instant and unquestionable demonstration as to defy dispute."

For these reasons, it is respectfully submitted that there is no motivation to one of ordinary skill in the art to substitute an element that merely inhibits accidental removal of a cap and stays intact (Uhlig's ratchet teeth) for an element that makes it impossible to remove the cap without first destroying that element (Anderson's ring). Because there is no motivation to substitute Uhlig's ratchet teeth for Anderson's ring, the obviousness rejection is submitted to be improper. *See In re Rouffet*, 47 USPQ 2d 1453, 1457-58 (Fed Cir 1998).

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For the reasons stated, early and favorable reconsideration is respectfully
requested.

Respectfully submitted,



Dennis E. Stenzel

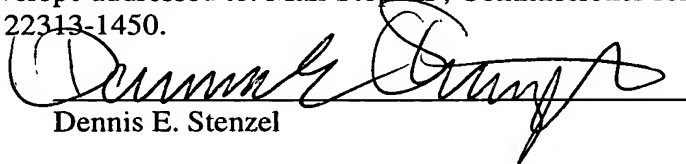
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Nov 29, 04
Date



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